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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/317,409	05/24/1999	SCOTT D. LUCAS	1590.3039	9060

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EXAMINER	
BEFUMO, JENNA LEIGH	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/317,409	LUCAS ET AL.	
	Examiner	Art Unit	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 – 12, 39 – 46, 55, 57 – 76, and 87 – 89* is/are pending in the application.

4a) Of the above claim(s) *1 – 12, 39 – 46, 60 – 76 , and 87* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *55,57-59,88 and 89* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 27, 2005 has been entered.

Response to Amendment

2. The Amendment submitted on June 27, 2005, has been entered. Claims 13 – 38, 47 – 54, 56, and 77 – 86 have been cancelled. Claim 55 has been amended and claims 88 and 89 have been added. Therefore, the pending claims are 1 – 12, 39 – 46, 55, 57 – 76, and 87 – 89. Claims 1 – 12, 39 – 46, 60 – 76 , and 87 are withdrawn from consideration as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 89 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Claim 89 recites that "at least one of the prepreg plies is a stiffness treated prepreg ply not in contact

with the honeycomb core". However, the disclosure does not provide support to exclude the stiffness treated layer from contacting the honeycomb core. The fact that the disclosure does not teach that the stiffness-treated layer has to be in contact with the honeycomb core or that the disclosure teaches that the stiffness treated layer can be an outer layer is not sufficient support. Neither of those teachings, disclose to one of skill in the art that the invention is produced by excluding the stiffness layer from contacting the honeycomb core. Instead, those teachings are silent as to whether or not the stiffness-treated layer can contact the honeycomb core. Therefore, one of ordinary skill in the art would not know that stiffness-treated ply cannot contact the honeycomb core. Hence, the concept is new matter.

Claim Rejections - 35 USC § 102/103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 55, 57 – 59, 88, and 89 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Corbett et al. (5,895,699).

The features of Corbett et al. have been set forth in the previous Office Action. The newly added claims 88 and 89 recite the composite has a honeycomb core, a stiffness-treated prepreg ply, a resin system, and at least one additional prepreg layer. As addressed previously these features are taught by Corbett et al.

Response to Arguments

7. Applicant's arguments filed June 27, 2005 have been fully considered but they are not persuasive. The applicant argues that Corbett et al. can not be used to reject the current claims because Corbett et al. teaches that the tiedown layer is in contact with the honeycomb core

(response, pages 11 – 13). However, claim 55 only recites that the stiffness treated ply is adjacent to the second prepreg ply, but there is no restriction with regards to which layer contacts the honeycomb core. Further, all the claims use comprising language which means that the structure can have additional layers. Therefore, the tiedown layers **175** taught by Corbett et al. read on the applicant's tiedown layer with the prepreg layers **102** between this tiedown layer and the honeycomb core. While the picture frame shaped tiedown layer **150** is an additional layer which is not excluded due to the use of comprising in the claim. Thus, Corbett et al. teaches the claimed layers in the claimed order, while having additional layers as well.

Further, the applicant argues that the materials used by Corbett et al. are different from the claimed materials, as defined in the disclosure, and therefore, would not inherently possess the claimed properties (response, pages 13 – 16). The applicant argues that the materials used by Corbett et al. are different from the claimed structure due to the applicant's definitions of the terms "untreated fabric" and "polymerized polymeric stiffening material" (response, pages 14). First, it is noted that the applicant is claiming that the stiffness treated fabric comprises "a plurality of fibers and a polymerized polymeric stiffening material disposed on the fibers". Hence, the arguments are not commensurate in scope with the claim. Second, the specification does not define or even use the term "polymerized polymeric stiffening material" which is recited in the claim.

And with regards to the applicant's argument that the term "derivatives of the precursors polymeric of a polymeric material" should be used to define the term "polymerized polymeric stiffening material", the section referred to by the applicant does not specifically define the term "derivatives of precursors of polymeric material", but instead only suggests that the this type of

polymeric material is useful as the stiffening material. Further, the paragraph goes on to state that practically any type of material which can be used to produce a polymerized polymer by various reactions including addition and condensation products without limitation can be used as types of polymeric material. Thus, the polymerized material, which would be present in the claimed product can be any type of thermoplastic or thermoset polymeric coating without limitation.

Further, the applicant states that an untreated fabric is defined "as containing precursors of polymeric stiffening material, wherein both the fabric and the fabric raw materials have not been treated under conditions which advance polymerization and/or derivative formation of precursors of polymeric material to the extent necessary to reduce core crush" (response, page 14). However, the definition in the disclosure states that an untreated fabric "means a fabric which optionally has the same types of fiber, weave, and/or precursors of polymeric material as the fiber, weave, and/or precursors of polymeric material of the stiffness-treated fabric with which it is compared" (specification, page 20). The paragraph then goes on to state that the untreated fabric is a fabric that can comprise fabric raw materials, and ***optionally***, precursors of polymeric material ..." (emphasis added). Hence, the untreated fabric is not required to have precursors of polymeric material. Further, the definition is broad enough to read on any fibrous material with or without a precursor coating. Thus, Corbett et al. teachings using materials within the scope of the stiffness-treated and prepreg plies as claimed.

The applicant's arguments that the prior art uses materials which are different from those claimed, and therefore, the prior art would not inherently possess the claimed properties are not sufficient. For the reasons set forth above, Corbett et al. uses the same materials as those

claimed by the applicant and therefore, the properties are presumed to be inherent. The burden is shifted to the applicant to prove that this feature is not inherent to the prior art structure. The arguments of counsel cannot take the place of evidence. *In re De Blauwe,* 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). Therefore, the rejection is maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
September 6, 2005